IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7.2.2007

CORAM

THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION NO.47386 OF 2006
AND
M.P.NO.2 OF 2006

B.S. Chinnasamy Gounder ... Petitioner

Vs.

1. The Regional Transport Authority
   Dharmapuri.

2. The State Transport Appellate
   Tribunal, City Civil Court
   Buildings, Chennai - 104. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the second respondent relating to Appeal No.85/2005/A4, dated 9.1.2006, confirming the order of the first respondent made in R.No.A3/19380/2004, dated Nil.1.2005 and to quash the same.

For Petitioner : Mrs. Radha Gopalan
Senior Counsel
for Mr.K.Hariharan

For Respondents : Mr. A. Edwin Prabhakar
Government Advocate

WEB COPY

O R D E R

The writ petition is filed challenging the order of cancellation of the mini bus permit on the ground of violation of the provisions of the Motor Vehicles Act, 1988 and the Rules.

https://hcservices.ecourts.gov.in/hcservices/

2. The petitioner was holding two mini bus permits issued by the first respondent herein in respect of vehicle bearing Registration Nos.TN-29-E-5323 and TN-29-E-1409 for the route from Palacode bus stand to Marandahalli bus stand. Based on the Motor Vehicle Inspector's report, the Regional Transport Officer, Dharmapuri, the first respondent issued a charge memo dated 23.6.2004 calling upon the petitioner-permit holder to show cause as to why the permit should not be cancelled on the ground that the two vehicle did not ply on road for more than six months. Such notice was issued in terms of Section 86(1) of the Motor Vehicles Act, 1988. The charge memo was served on the petitioner-permit holder on 1.9.2004, however, it is stated that no explanation was submitted. During the pendency of the proceedings, the petitioner-permit holder applied for replacement of the vehicle bearing Registration No.TN-29-E-5323 by another vehicle bearing Registration No.TN-45-N-0406. Such request was made on the ground that the earlier vehicle was seized by the financier. Petitioner, therefore, sought for replacement of the vehicle with the authorities pending charge memo by his application dated 19.11.2004.

3. It was contended by the petitioner that the hire purchase vehicles were in the possession of the petitioner. The financier seized the vehicles on default, in repayment of the loan. Petitioner was paying the tax and compounding fee regularly upto 31.12.2004. Since the petitioner had purchased another vehicle bearing Registration No.TN-45-N-0406, he prayed for replacement of the vehicle pending the charge memo.

4. According to the Department, the petitioner lost possession of the vehicles covered by the mini bus permit and the petitioner did not submit the stoppage report and did not obtain prior permission from the first respondent to stop the vehicles as contemplated under Rule 172(6) of the Tamil Nadu Motor Vehicles Rules, 1989. The Motor Vehicle Inspector had reported that both the vehicles were off the road for more than six months and in view of the statement of the petitioner that the vehicles were repossessed by the financier and the vehicles did not run in the route specified for the period in question, the Department had proceeded under Section 86(1) of the Motor Vehicles Act, 1988, stating that the permit holder ceased to own the vehicles and were off the road for more than six months without prior permission and stoppage report. The proceedings were taken for cancellation of permit under Section 86(1) for violation of the provisions of the Motor Vehicles Act, 1988 and the Rules, in particular Rule 172(6) of the Tamil Nadu Motor Vehicles Rules, 1989. The Department therefore, cancelled the permit on the ground that the continuation of the permit will not be in public interest and the permit was cancelled with effect from 31.12.2004 under Section 86(1) of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Motor Vehicles Act, 1988 holding as follows:-

> "It is evident that the permit holder has ceased to have possession of the vehicles which is off the road for more than 6 months. Given the aforesaid facts and circumstances it is clear that continuance of the permit is not going to be in public interest."

As against the order of cancellation of the permit, an appeal was filed to the second respondent State Transport Appellate Tribunal, which by its judgment dated 9.1.2006, dismissed the appeal and confirmed the order of the first respondent. As against the same, the present writ petition has been filed.

5. Mrs.Radha Gopalan, learned Senior Counsel appearing for the petitioner submitted that the petitioner was in possession of the vehicles by way of hire purchase agreement and running it under the permit and due to financial crisis, he could not pay the loan in time and the financier had repossessed the vehicles. The permit, however, remained in the name of the petitioner. It is also contended by the learned senior counsel that in terms of Section 86 (1) of the Motor Vehicles Act, 1988, the Transport Authority, which granted permit may cancel the permit or may suspend it for such period as it thinks fit, if the holder of the permit ceases to own the vehicle covered by the permit. According to the learned senior counsel, the petitioner did not own the vehicles as they were in his possession pursuant to an hire purchase agreement. Therefore, the provisions of Section 86(1)(c) will not apply. Learned senior counsel relied upon the decision reported in A.I.R. 1969 Supreme Court 493 (Viswanatha Pillai - vs. - Shanmugham Pillai) approving the decision of the Allahabad High Court reported in AIR 1963 Allahabad 383 (Khalil-ul-Rahman - v. - State Transport Appellate Tribunal) to contend that the cancellation of permit of the petitioner on the ground that the petitioner ceased to own the vehicles was incorrect and contrary to Section 86 of the Motor Vehicles Act, 1988. It was further contended that at the time when the proceedings were initiated under Section 86(1) of the Motor Vehicles Act, 1988, the petitioner sought for replacement of one of the vehicles as provided under Rule 201 of the Tamil Nadu Motor Vehicles Rules, 1989 and in terms of Rule 202 no rejection has been made inspite of the petitioner producing another vehicle in replacement. It was also submitted that in the facts and circumstances of the case, the first respondent and the appellate authority, the second respondent should have used their discretion under Section 86(5) and 86(6) respectively and imposed a lesser punishment instead of cancellation of the permit which according to the petitioner, is harsh and unreasonable.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. The learned Senior Counsel appearing for the petitioner also relied upon a decisions of this Court in W.P.No.18852 of 2005, dated 29.11.2006 and C.R.P.No.3903 of 1987 dated 22.2.1994 and submitted that in similar situations this Court had earlier interfered with the order of the competent authority cancelling the permit and granted the relief of suspension with option to compound the same. In this case also, the petitioner prays for similar relief on the ground that even before the proceedings were concluded under Section 86(1) a bona fide request was made to the authorities for replacement. It was submitted that the prayer for replacing of the vehicle by another vehicle was to serve the interest of the village people, who will be benefitted by the mini bus permit. It is now stated that no new permit was issued and there is no service to the village people in the said route after the cancellation in December, 2004. The order of the first respondent as affirmed by the second respondent is made in a mechanical manner without considering the ground realities and without considering the liberalized policy under the new Motor Vehicles Act, 1988.

7. In this regard, time was given to the Government Advocate to get instructions and verify whether the route in which the permit was granted and cancelled, is operated by any other operator and what steps were taken by the authorities to provide mini bus service to the route in question. Learned Government Advocate was asked to verify if any previous offence is recorded in respect of the petitioner. On instructions, it was submitted by the learned Government Advocate that the service to that particular route was suspended and there is no mini bus operating in that particular route from the date of cancellation and that there is no material regarding previous offence. The learned Government Advocate also submitted that because of the owner ceases to own the vehicle in terms of Section 86 of the Motor Vehicles Act, 1988, the permit was cancelled.

8. I have considered the contentions raised in the writ petition and the arguments of the senior counsel for the petitioner and the stand of the Department in the proceedings which is impugned before this Court and that of the counsel for the Department. The violation as contained in the charge memo/show-cause notice is not in dispute. The permit in question has been cancelled consequent to the repossession of the vehicles by the financier on the ground that the permit holder has ceased to have possession of the vehicles which were off the road for more than six months without prior permission and without stoppage report as contemplated under the Rules, which is a violation of the statutory provision, liable for action by way of cancellation of the permit in question. In this case, the cancellation of permit was done for the aforesaid

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

violation. It is during the pendency of this proceedings that the petitioner made an application for replacement of the vehicle. The first respondent while deciding the issue relating to cancellation of the permit did not go into the question of replacement of the vehicle even though such application was pending before him. The appellate authority while considering the appeal, dealt with the application for replacement of the vehicle and came to the conclusion that only after the charge memo, the prayer for replacement was made. The appellate authority came to the conclusion that the application for replacement does not provide for a mandatory obligation to accept such prayer and quoting Rule 202 of the Motor Vehicles Rules, 1989, it was held that the application for replacement can be rejected for financier's dues and affirmed the reasoning given by the first respondent. There is no specific rejection in respect of the application for replacement.

9. The first respondent proceeded on the premise that the petitioner-permit holder ceased to have possession of the vehicles and therefore, cancellation of permit is warranted. In this background, the contention of the petitioner that Section 86(1)(c) of the Motor Vehicles Act, 1988, will not be applicable to the case of the petitioner has to be considered.

10. Section 86(1)(a), (b), (c) and (e) and Section 86(5) and (6) of the Motor Vehicles Act, 1988, which is relevant, reads as follows:-

> 86. Cancellation and suspension of permit:- (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit-
>
> (a) on the breach of any condition specified in Section 84 or of any condition contained in the permit, or
>
> (b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or
>
> (c) if the holder of the permit ceases to own the vehicle covered by the permit, or
>
> (d) xxx
>
> (e) if the holder of the goods carriage permit, fails without reasonable cause, to use the vehicle for the purposes for which the permit was granted, or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(f) xxx
(2) xxx
(3) xxx
(4) xxx

(5) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (e) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

(6) The powers exercisable by the transport authority under sub-section (5) may, where an appeal has been preferred under Section 89, be exercised also by the appellate authority."

Section 86(1)(c) contemplates ownership of the vehicle by the permit-holder. The terms "ceased to own" and "ceased to possess" have two distinct connotations. According to Advanced Law Lexicon the word "Ceased" is a strictly proper word to apply to the case where the entire thing has "ceased to be". In the present case, the permit is in the name of the petitioner and is not extinct or put to an end. The petitioner, however, claims that he does not own the vehicle. The ownership of the vehicle is different from the grant of permit. The possession of the vehicle pursuant to a hire purchase agreement does not contemplate ownership of the vehicle as contemplated under Section 86(1)(c) of the Motor Vehicles Act, 1988. In the present case, the finding is "permit holder ceased to have possession of the vehicles". Section 86(1)(c) has been invoked as if the petitioner is the owner of the vehicles. When the issue was taken up by the first respondent, the petitioner submitted the reason for not plying the vehicle stating that the financier has repossessed the vehicles and also sought for replacement by own vehicle. This itself makes it clear that Section 86(1)(c) of the Motor Vehicles Act, 1988, will not apply. The permit was issued in the name of the petitioner and since the vehicles were repossessed by the financier, petitioner sought for replacement by his own vehicle. Strictly, Section 86(1)(c) cannot be applied in the facts of the present case, as has been clearly held by the Apex Court in A.I.R. 1969 Supreme Court 493 (cited supra) upholding the finding of the Allahabad High Court reported in A.I.R. 1963 Allahabad 383 (cited supra). The Allahabad High Court in the aforesaid decision while dealing with the question of ownership of permit and ownership

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of vehicle observed as follows:-

> "(21) The argument that the name of the third respondent could not be directed to be entered in the permit because he did not own or possess any share in the vehicle covered by the permit can be answered in two ways: In the first place a reference to the various provisions of the Motor Vehicles Act will show that for a permit holder in respect of a stage carriage it is not necessary that he should have any interest proprietary or possessory in the vehicle itself. The word permit has been defined in clause (20) of Section 2 of the Act in these words:-
>
> " "Permit" means the document issued by (the commission or) a (State) or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage or a stage carriage or authorising the owner as a private carrier or public carrier to use such vehicle."
>
> (22) It will be noticed that in this definition so far as a contract carriage or a stage carriage is concerned there is no reference to ownership or possession. In respect of such a vehicle a permit is a document issued by the proper authority authorising the use of the vehicle. The vehicle may belong to the person who is authorised to use it or may not belong to him. The definition does not even require the person to whom the document is issued to be in the possession of the vehicle in any particular manner. Of course in order to use the vehicle he will have to be in control of it and that control may in most cases amount to possession. Had it been made a condition of the grant of a permit that the permit holder should either own or possess the vehicle the purpose of the definition would have been necessarily narrowed down and greatly restricted. It is not difficult to conceive of cases where it may be necessary to grant permits in respect of the vehicles not belonging to the permit holder and not in his proprietary possession. For instance, a person borrows a certain vehicle on certain terms and wants a permit to ply it himself or through his agent or servant, to get

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

a permit in order to use the vehicle as a stage carriage."

11. The Apex Court while considering the provisions of Section 60(1)(c) of the Old Motor Vehicles Act, 1939, which is similar to Section 86(1)(c) of the New Motor Vehicles Act, 1988, approved the decision of the Allahabad High Court reported in AIR 1963 Allahabad 383 (Khalil-ul-Rahman – v. - State Transport Appellate Tribunal) referred to above. The decision of the Apex Court relevant to the present context is paragraphs 9 to 11:-

"9. Some reliance was placed on the amendments made in Section 60(1)(c). The section as amended reads:

"60(1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit-

(c) if the holder of the permit ceases to own the vehicle or vehicles covered by the permit..... "

There has been a conflict of opinion between the different High Courts as to the inference following that amendment. It seems to us that the High Court of Allahabad in Khalil-ul-Rahman Khan – v. - State Transport Appellate Tribunal, AIR 1963 Allahabad 383 at page 388 rightly gives the effect of the amendment. Srivastava,J., observed:

"A reference was, however, made to Clause (c) of sub-section (1) of Section 60 of the Act and on the basis of that clause it was urged that it assumed that the permit holder should be the owner of the vehicle. That clause provides for one of the contingencies in which a permit can be cancelled. According to it, it is permissible for the Transport Authority to cancel a permit if the holder of it ceases to own the vehicle covered by the permit. It is only a permissive clause and the Transport Authority has only been given a discretion to cancel the permit in that contingency. It may or may not cancel it, even if the holder of the permit ceases to own the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

vehicle covered by it. But it is by no means necessary that Clause (c) should be applicable to the case of every permit holder. There may be permit holders who own the vehicle covered by the permit and there may be permit holders who do not own the vehicle. This clause appears to apply only to the former case and not to the latter. On its basis, therefore, it cannot be held to be a requirement of the Act that in each case the person in whose favour a permit has been issued should necessarily be the owner of the vehicle covered by it." (emphasis supplied)

10. We agree with these observations. The contrary view held in Varadarajulu Naidu - v. - Thavasi Nadar, 1963-2 Madras LJ 20 = (AIR 1963 Madras 413) that Section 42(1) contemplates that only an owner will have a permit is erroneous.

11. The decision of the Andhra High Court in Chavali Venkataswami - v. - Chavali Kotayya, 1959-2 Andh WR 407 = (AIR 1962 Andh Pra 14) that Section 60(1)(c) of the Act envisages the grant of a permit to the owner alone must also be dissented from." (emphasis supplied)

In the present case also, the petitioner is only a permit holder, and in view of his default, the vehicles were repossessed by the financier. It is therefore, clear that the petitioner is not the owner of the vehicle and he does not claim so. Section 86(1)(c) of the Motor Vehicles Act, 1988, speaks about ownership of the vehicle. The authority has invoked Section 86(1)(c) of the Act, but held that the petitioner ceased to have possession of the vehicles. There is, therefore, a clear indication in Section 86(1)(c) of the Act that it will apply with regard to persons who own the vehicle. There is an apparent confusion in the mind of the authority regarding ownership and possession and therefore, failed to consider the claim for replacement of the vehicle in the pending proceedings. In view of the aforesaid decision of the Apex Court, the action under Section 86(1)(c) of the Motor Vehicles Act, 1988 may not be appropriated on the ground that the petitioner-permit holder ceased to have possession of the vehicle. However, for the violation of Rule 172 (6) of the Tamil Nadu Motor Vehicles Rules, 1989 and Section 86(1) (a), (b) and (e) of the Motor Vehicles Act, 1988, action is maintainable and it is not disputed by the petitioner.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. Further, the liberalized provisions of the New Motor Vehicles Act, 1988 provided for payment of money in lieu of cancellation or suspension of permit. The relevant provisions, viz., Section 86(5) and 86(6) of the Motor Vehicles Act, 1988 which has been extracted above, clearly provides for use of discretion by the authority in the matter of cancellation or suspension in respect of other violations which are not in dispute. The rules provide the basis for payment of compounding fee in lieu of cancellation. On report, it has been found that there is no previous case as against the petitioner and the suspension of the mini bus route has affected the benefit that will go to the people of the rural area in question. The authorities should have taken a pragmatic view of the matter and imposed a lesser punishment either suspending or imposing fine by way of compounding fee as provided under the Act and the Rules.

13. This Court in C.R.P.No.3903 of 1987 dated 22.2.1994 has modified the order of cancellation into one of suspension of permit for 60 days with an option to compound the offence by paying compounding fee at the rate of Rs.100/- per day. In the same manner, in W.P.No.6896 of 1998 dated 27.7.2006, the punishment of cancellation of permit was modified into one of suspension of permit for 10 days with option to compound for payment at the rate of 100/- per day modifying the order of the appellate authority.

14. It is not in dispute that the petitioner is guilty of violation of the Rules as stated above and therefore, is liable to be proceeded for violation of the same as per Section 86(1)(a), (b) and (e) of the Motor Vehicles Act, 1988 and the Rules as stated above. The New Motor Vehicles Act, 1988 is based on the liberalized policy of the Government. No new permit has been issued in the aforesaid route after the cancellation of the permit given to the petitioner. The public of the rural area in question will suffer without the bus being operated in the route. The cancellation of the permit granted in favour of the petitioner without restoring the same for a long period of time will not be in public interest. As stated by the learned Government Advocate appearing for the respondents, the petitioner is not involved in any previous offence or violation. In such circumstances, this Court is inclined to modify the order of cancellation of permit into one of suspension of permit for a period of thirty days with an option to compound the offence as per the Act and the Rules. The order of the respondents is modified to the extent indicated above.

15. It has to be borne in mind that the Act does not contemplate automatic cancellation of the permit. A discretion is given to the authorities to exercise such power one way or the other. In the present case, since the vehicle was repossessed by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the financier, it is open to the authorities to consider the claim for replacement of the vehicle. In the instant case, the petitioner has given an application for replacement by a own vehicle and the same has to be considered objectively on various aspects as stated earlier. The authority shall also consider the claim of the petitioner for replacement of the vehicle in accordance with the provisions of the Motor Vehicles Act and the Rules and pass necessary orders in accordance with law within four weeks from the date of receipt of copy of this order. The writ petition is ordered accordingly. Consequently, M.P.No.2 of 2006 is closed. No costs.
kb/ts

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

1. The Regional Transport Authority
   Dharmapuri.

2. The State Transport Appellate
   Tribunal, City Civil Court
   Buildings, Chennai - 104.

+ one cc to the Government Pleader sr no. 7509
+ one cc to Mr. K. Hariharan, Advocate sr no. 7482

KM(CO)
NM(15.03.07)

W.P.No.47386 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/